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CITATIONS

Cases:

Central R. Co. v. *Commissioner*, 79 F. (2d) 697 — 4

Farmers' & Merchants' Bank v. *Commissioner*, 59 F. (2d) 912 — 4

Lyeth v. *Hoey*, 305 U. S. 188 — 5

Magruder v. *Segebade*, 94 F. (2d) 177 — 4

Sterling v. *Commissioner*, 93 F. (2d) 304, certiorari denied, 303 U. S. 663 — 4

Statute:

Revenue Act of 1932, c. 209, 47 Stat. 169:

Sec. 22 — 2

316417—41

In the Supreme Court of the United States

OCTOBER TERM, 1940

No. 947

FRANK WHITE ET UX, MRS. FRANK WHITE,
PETITIONERS

v.

W. A. THOMAS, COLLECTOR OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the District Court (R. 127–130) is not reported. The opinion of the Circuit Court of Appeals (R. 138–140) is reported in 116 F. (2d) 147.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on December 5, 1940. (R. 141.) A petition for rehearing was denied on January 14, 1941. (R. 149.) The petition for a writ of certiorari was filed April 12, 1941. The jurisdiction

of this Court is invoked pursuant to the provisions of Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

The petitioner received $125,000 during the taxable year in settlement of an action brought by him to recover real property.

The question is whether this payment constituted taxable income.

STATUTE INVOLVED

Revenue Act of 1932, c. 209, 47 Stat. 169:

> SEC. 22. GROSS INCOME.
>
> (a) *General Definition.*—"Gross income" includes gains, profits, and income derived from salaries, wages, or compensation for personal service, of whatever kind and in whatever form paid, or from professions, vocations, trades, businesses, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property; also from interest, rent, dividends, securities, or the transaction of any business carried on for gain or profit, or gains or profits and income derived from any source whatever. In the case of Presidents of the United States and judges of courts of the United States taking office after the date of the enactment of this Act, the compensation received as such shall be included in gross income; and all Acts fixing the compensation of such Presidents

and judges are hereby amended accordingly.

(b) *Exclusions From Gross Income.*—The following items shall not be included in gross income and shall be exempt from taxation under this title:

* * * * *

(3) *Gifts, Bequests, and Devises.*—The value of property acquired by gift, bequest, devise, or inheritance (but the income from such property shall be included in gross income);

* * * * *

STATEMENT

Frank White was an employee and protege of Mrs. Margaret A. Shannon prior to her death on December 13, 1931. (R. 20, 108–109.) In her will, Mrs. Shannon left certain real estate and some stock to White. (R. 24.) However, he claimed that Mr. and Mrs. Shannon had, during their lifetime, given him a ranch in Crockett County, Texas. (R. 110.) He sued the executors of Mrs. Shannon's estate during 1932, to try the title to the ranch. (R. 20.) The executors filed another suit to clear the title. (R. 21.) During March, 1932, White and the executors entered into a compromise and settlement of the respective claims and counter claims, under which White was to receive $125,000 in addition to the property specifically bequeathed to him by will. (R. 21.)

The petitioners filed income tax returns for the year 1932, without including any part of the $125,000 received from the executors. The Commissioner of Internal Revenue ruled that the whole sum should have been included, and asserted deficiencies accordingly. The petitioners paid the additional taxes, and then filed claims for refund, which were duly rejected. (R. 22.) The petitioners then sued the Collector in the District Court, which held that the sum received in settlement was taxable income, and gave judgment for the Collector. (R. 129.)

ARGUMENT

1. The decision below is in full accord with the decision of the Circuit Court of Appeals for the Second Circuit in *Sterling* v. *Commissioner,* 93 F. (2d) 304, a case involving facts which are substantially the same as those here presented. This Court denied certiorari in the *Sterling* case (303 U. S. 663), despite the assertion of conflict with *Magruder* v. *Segebade,* 94 F. (2d) 177 (C. C. A. 4th), *Central R. Co.* v. *Commissioner,* 79 F. (2d) 697 (C. C. A. 3d), and *Farmers' & Merchants' Bank* v. *Commissioner,* 59 F. (2d) 912 (C. C. A. 6th), the very decisions upon which the petitioner in this case bases his allegation of conflict. There would seem to be no more persuasive reason for the grant of the writ in this case than there was in the *Sterling* case.

2. The decision in *Lyeth* v. *Hoey*, 305 U. S. 188, is distinguishable. There the taxpayer had received property from the estate of a decedent in compromise of his claim as an heir. This Court held that the taxpayer acquired the property by "bequest, devise, or inheritance" and he was therefore exempt from income tax. Here, on the other hand, there is no assertion that the property forming the subject of the litigation was left by will or that the taxpayer could claim it as an heir. Moreover, it cannot reasonably be held that the $125,000 compromise payment was exempt from income tax as property "acquired by gift". There is no claim that Mrs. Shannon made the taxpayer a gift of $125,000 and her executors were without power to make such a gift. It would seem, therefore, that the rationale of *Lyeth* v. *Hoey* is inapplicable to the situation here presented.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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